

HOUSE BILL NO. 287

INTRODUCED BY B. WARDEN

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING LIMITS ON THE AUTHORITY OF MONTANA PEACE OFFICERS TO ENFORCE PROVISIONS OF THE PATRIOT ACT AND OF OTHER FEDERAL LAWS IN CONFLICT WITH RESTRICTIONS IN THE MONTANA CONSTITUTION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, Montana is one of several sovereign states that have operated together to engender and empower the government of the United States of America; and

WHEREAS, the United States federal government is a creature of the states and is an entity of limited, fixed, and defined powers that are limited and defined in, among other places, the 9th and 10th amendments to the United States Constitution; and

WHEREAS, the people of Montana have reserved to themselves certain rights and freedoms in the Montana Constitution; and

WHEREAS, the people of Montana have limited the powers of the State of Montana and its political subdivisions and the respective employees of those entities by restrictions placed in the Montana Constitution; and

WHEREAS, the United States Congress has passed various laws, including the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56, 115 Stat. 272 ("Patriot Act"), which contain provisions offering authority to federal law enforcement agencies and personnel for acts that may be in conflict with the limitations on governmental conduct proscribed by the people of Montana in the Montana Constitution; and

WHEREAS, in *Printz v. United States*, 521 U.S. 898, 117 S. Ct. 2365 (1997), the principle was established that Congress may not commandeer the resources and cooperation of local law enforcement; and

WHEREAS, law enforcement agencies in Montana are empowered and operate under statutes that are limited by the constraints existing in the Montana Constitution; and

WHEREAS, if Montana law enforcement personnel are sought to cooperate with federal law enforcement officers in ways that are not consistent with the restrictions in the Montana Constitution, those Montana law enforcement personnel will need direction, as a matter of legislated public policy, concerning their

1 allegiance and the limits of their authority; and

2 THEREFORE, the Legislature of the State of Montana finds it appropriate to declare the limits of police
3 power for law enforcement personnel employed by the state or any of its political subdivisions, consistent with
4 the rights and restrictions of the Montana Constitution.

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6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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8 NEW SECTION. **Section 1. Limits of law enforcement cooperation in enforcement of federal laws.**

9 (1) A person normally operating as a peace officer pursuant to the laws of Montana who aids federal authorities
10 in the enforcement of any federal laws that are in conflict with rights reserved to the people of Montana in the
11 Montana constitution or with restrictions imposed on the state in the Montana constitution is considered to be
12 acting outside of the person's authority as a Montana peace officer and to be acting as a private person without
13 state authority.

14 (2) (a) A Montana peace officer may not accept concurrent deputization as a federal officer for the
15 purpose of avoiding the provisions of subsection (1).

16 (b) A mutual aid agreement authorized by 44-11-304 may not contain any provision that abrogates the
17 provisions of subsection (1).

18 (3) For purposes of this section, "peace officer" has the meaning provided in 46-1-202.

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20 NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an
21 integral part of Title 44, chapter 11, part 1, and the provisions of Title 44, chapter 11, part 1, apply to [section 1].

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23 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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